

BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation)	
Against:)	No. D-5699
)	
GERALD T. BASINGER, M.D.)	OAH No. N-9402003
923 Dana Drive, Suite 1)	
Redding, California 96003)	
)	
Physician's and Surgeon's)	
Certificate No. G-19374)	
)	
)	
Respondent.)	
)	

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Medical Board of California as its Decision in the above-entitled matter.

This Decision shall become effective on January 11, 1995.

IT IS SO ORDERED December 12, 1994.



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Respondent.)	
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PROPOSED DECISION

Catherine B. Frink, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on the following dates: on April 18, 1994 in Sacramento, California; on April 26-29, 1994 in Redding, California; and on May 2-6, June 30, July 1 and August 12, 1994, in Sacramento, California.

Robert C. Miller, Deputy Attorney General, represented the complainant.

Respondent was present and was represented by Robert K. Crawford, Attorney at Law, P.O. Box 117279, Burlingame, California 94011-7279.

Evidence was received, the hearing was closed and the record was held open for the submission of briefs. Complainant's Closing Argument was received on October 24, 1994 and was marked as Exhibit 16. Respondent's Final Argument was received on November 1, 1994 and was marked as Exhibit HH. Thereupon, the record was closed and the matter was submitted.

FINDINGS OF FACT

I

Complainant Dixon Arnett filed the Accusation and Amended Accusation in his official capacity as the Executive Director of the Medical Board of California ("the Board").

The Amended Accusation was further amended at hearing as follows:

Page 3, lines 17-21: Delete Paragraph 9 pertaining to Patient C.G.

Page 3, line 23: add "and" after "7" and delete "and 9" after "8" in Paragraph 10.

Page 4, line 1: add "and" after "M.B." and delete ", and C.G." after "K.J." in Paragraph 10.

II

On October 15, 1970, the Board issued Physician's and Surgeon's Certificate No. G-19374 to Gerald Thomas Basinger ("respondent"). Said certificate will expire on January 1, 1996 unless renewed.

III

By Interim Order dated February 14, 1994, respondent's Physician's and Surgeon's Certificate No. G-19374 was suspended pending a hearing pursuant to Government Code section 11529(b) and (c). Respondent waived his right to a hearing on the Interim Order pursuant to Government Code section 11529(c) and (d). The Accusation and Amended Accusation were filed pursuant to Government Code section 11529(f). Respondent waived his right to a hearing within 30 days of his request for a hearing after filing of the Accusation and Amended Accusation, pursuant to Government Code section 11529(f); the parties stipulated to commence the hearing in April 1994 on the dates set forth above.

IV

Respondent graduated from George Washington University Medical School in Washington, D.C. in June 1966. Respondent performed a rotating internship with the U.S. Army Tripler General Hospital, Honolulu, Hawaii from July 1966 to June 1967. Respondent attended Army Flight Surgeon School from July 1967 to August 1967 and thereafter served three years as a general practitioner for the military from 1967 to 1970. Respondent was stationed primarily in West Germany during his military service. Thereafter, respondent performed a medical residency at the

University of California at San Diego, with a general surgery residency from October 1970 to June 1971 and a urology residency from July 1971 to June 1975, including a fellowship in urology from 1972 to 1973.

Respondent became Board certified as a urologist in February 1977 by the American Board of Urology. Respondent is presently licensed in California, Idaho (License No. M-5272), Montana (License No. 6105) and Utah (License No. 1054810010).

Respondent was employed as a staff urologist at Kaiser Medical Center San Diego from 1975 to 1976. Respondent thereafter was a sole practitioner in urology until 1981 when he became associated with the Scripps Clinic Medical Group. In 1991, respondent terminated his association with the Scripps Clinic Medical Group and moved from San Diego to Redding, where he became involved in a joint urology practice with Dr. Robert Maurer. In early 1992, respondent sought psychological counseling from Dr. Kent Caruso, Ph.D., a psychologist, for depression. Respondent began the use of antidepressants, initially Prozac and subsequently Tofranil, and was also prescribed Xanax as a sedative by Dr. William DeVlaming, a general practitioner in Redding. In April 1992 respondent closed his urology practice and referred his patients to Dr. Maurer.

V

In the summer of 1992, respondent became employed part-time in the podiatry practice of his brother, Dr. Robert Basinger, D.P.M. Initially, respondent performed physical therapy for his brother's practice at the Golden State Foot Clinic in Redding; in the fall of 1992, respondent additionally began performing intravenous anesthetic procedures ("IV sedation") during foot surgeries performed by his brother; on occasion, respondent performed certain non-invasive tests (such as nerve conduction tests) on podiatry patients prior to surgery to assist his brother. Respondent last administered anesthesia to patients on December 28, 1993; he continued to perform physical therapy on podiatry patients until approximately January 19, 1994.

VI

Respondent followed the general procedures set forth below as his usual practice in performing routine IV sedation on podiatry patients during surgery. Respondent used a blood pressure cuff, EKG machine and pulse oximeter to monitor the status of patients during the procedure. Patients were brought to the surgery suite by a nurse and were placed in a chair which could be reclined at various angles. Patients were not required to disrobe prior to surgery; rather, they were instructed to wear loose-fitting clothing on the day of surgery.

After the patient was seated in the chair, the nurse or respondent might administer nitrous oxide by mask as a mild sedative if the patient appeared anxious about the surgery. Respondent or the nurse would then place a blood pressure cuff on the patient's arm and a pulse oximeter on the patient's left hand. The nurse then would place the IV into the patient's hand. If the patient appeared relaxed, respondent customarily placed the EKG leads on the patient while the patient was awake; however, if the patient appeared uncomfortable or anxious, it was respondent's practice to administer Versed and then Diprovan through the IV line and then attach the EKG leads after the patient had fallen asleep. Respondent used a two-lead EKG; one lead was placed on the right upper chest above the right breast, and the second lead was placed on the left lower chest below the left breast. The EKG leads were attached to the skin of the patient by use of specially designed adhesive pads with a moist, spongy material in the center to create a "contact point" for the EKG. Respondent would place his hand into the shirt of the patient to place the EKG leads. If a female patient was wearing a bra, she was not asked to remove the bra; respondent would place the left lower EKG lead underneath the bra, which required respondent to place his hand into the bra. Depending on the size of the patient's breasts and the angle of the table, it might be necessary for respondent to lift or move the breast in order to properly place the EKG lead.

After the patient was asleep, respondent's brother, Dr. Robert Basinger, would administer several shots of a local anesthetic to the area of the foot where surgery was to be performed. A "screen" or drape of material is also placed in the area of the patient's lower leg to create a "sterile field" for the foot surgery to take place; this screen blocks the view that Dr. Robert Basinger and the nurse assisting him have of respondent and the upper body of the patient.

It was respondent's practice to maintain IV sedation for the patient until the local anesthetic had taken effect, or until surgery was nearing completion. After respondent ceased administering medications through the IV line, patients would typically wake up in a few minutes. Once respondent was confident that no further IV sedation would be needed, respondent would remove the EKG leads from the patient's body; the patient might not be fully awake while the leads were being removed. Respondent or the nurse would then remove the IV line. The pulse oximeter and the blood pressure cuff were removed last.

VII

On October 1, 1993, M.B. was respondent's anesthesiology patient at the Redding Ambulatory Surgery Center. M.B. was wearing loose-fitting pants, a t-shirt with a crew neck and a bra at the time of surgery. After M.B. was escorted to the

surgery suite and was seated in the chair, respondent took a history from M.B. The nurse placed a blood pressure cuff on M.B. and placed the IV into M.B.'s hand with respondent's assistance. M.B. saw respondent remove some medication from a cupboard in the surgery suite and put some of it into the IV line. M.B. does not recall respondent placing any EKG leads on her body prior to the commencement of the surgical procedure.

As M.B. was awakening from the anesthesia, she felt a pressure on her left breast; she began moving her head from side to side in an effort to resist the pressure. At hearing, M.B. described the pressure on her left breast as "heaviness," as if a large hand was pushing down, and a "cupping" of the breast. M.B. opened her eyes and looked down; her t-shirt was raised on the left side, and she saw the screen separating her from Dr. Robert Basinger and the nurse. M.B. observed respondent bring his hand out through the neck on the right side of her t-shirt; M.B. no longer noticed the pressure on her left breast. Respondent told M.B. that the surgery was over; he reached back into her t-shirt. M.B. closed her eyes; when she opened her eyes again the screen had been removed and Dr. Robert Basinger was seated on a stool at M.B.'s feet along with the nurse.

It was not established by clear and convincing evidence to a reasonable certainty that respondent fondled the breast of M.B. as she awakened from anesthesia on October 1, 1993. Respondent has no independent recollection of the surgical procedure involving M.B. However, the conduct described by M.B. is consistent with respondent's established procedure for removing EKG leads from a patient as surgery draws to a close. The fact that M.B. does not recall EKG leads being placed on her body is consistent with respondent's practice of placing EKG leads on patients after the IV sedation begins to take effect, particularly if a patient is uncomfortable or anxious; in this case, it is noted that the nurse encountered some difficulty in placing the IV line into M.B.'s hand and required respondent's assistance to do so. Furthermore, while M.B. testified at hearing that she did not see any EKG leads after waking up from the anesthesia, she previously told Detective Paul Grooms of the Redding Police Department that there were heart monitor leads on her when she woke up after surgery and respondent put his hand back into her shirt to remove the leads.

M.B. told her husband and two of her friends shortly after the surgical procedure on October 1, 1993 that when she "came to" after the surgery the anesthesiologist had his hand on her breast. However, M.B. never complained about respondent's conduct to anyone at the Redding Ambulatory Surgery Center or the Golden State Foot Clinic, and she did not report respondent's conduct to the police or other authorities until after she heard on the news that respondent had been arrested in connection with alleged sexual misconduct toward another patient. Furthermore,

on October 5, 1993, less than a week after her surgery, M.B. filled out a Patient Survey for the Redding Ambulatory Surgical Center in which she indicated that she was pleased with the treatment she had received; in the "Comments" section of the survey, M.B. wrote, "Felt I was treated in a very professional manner and my treatment was confidential." M.B.'s testimony at hearing that she believed the survey pertained to her treatment by Dr. Robert Basinger and his staff at the Golden State Foot Clinic, and not to the surgery, was not persuasive.

VIII

On October 8, 1993, K.J. was respondent's anesthesiology patient at the Redding Ambulatory Surgery Center. K.J. was wearing loose-fitting pants with an elastic waist, a loose light-weight sweater and an underwire bra at the time of surgery. After K.J. was escorted to the surgery suite and was seated in the chair, the nurse placed an IV into K.J.'s hand. Then Dr. Robert Basinger came in and introduced respondent to K.J., stating that respondent would be doing the anesthesia. K.J. recalls that a pulse oximeter was placed on her finger and a blood pressure cuff was placed on her arm before she "went under." K.J. does not recall respondent placing any EKG leads on her body prior to the commencement of the surgical procedure.

When K.J. awoke from the anesthesia, she felt a hand down her shirt "jiggling" her left breast. At hearing, K.J. described the "jiggling" as a moving up and down motion; respondent was cupping the breast in his hand and moving the breast around. K.J. reported to Detective Paul Grooms of the Redding Police Department that she felt her left breast being "lifted." As K.J. opened her eyes, respondent pulled his hand quickly out of her shirt and was looking at a monitor; K.J. saw a piece of equipment in respondent's hand. Respondent left the room less than a minute later; the nurse removed the blood pressure cuff from K.J.'s arm and the pulse oximeter from K.J.'s finger.

It was not established by clear and convincing evidence to a reasonable certainty that respondent fondled the breast of K.J. as she awakened from anesthesia on October 8, 1993. Respondent has no independent recollection of the surgical procedure involving K.J. However, the events as described by K.J. are consistent with respondent's established procedure for removing EKG leads from a patient as surgery draws to a close. The fact that K.J. does not recall EKG leads being placed on her body is consistent with respondent's practice of placing EKG leads on patients after the IV sedation begins to take effect. K.J. was emphatic at hearing that she did not have EKG leads placed on her at any time during the procedure; she believes that she would have observed red marks on her skin from the adhesive pads used to attach the EKG leads because her skin is extremely

sensitive. However, K.J. testified that she did not believe she had worn EKG leads when she underwent a lithotripsy procedure to treat kidney stones; expert testimony from a Board-certified anesthesiologist, Dr. Paul J. Scipione, established that EKG monitoring is essential to the lithotripsy procedure. Furthermore, on the one occasion when K.J. recalls having EKG leads placed on her and red marks remaining after removal, the EKG leads were in place for a full day, rather than the less than 90 minutes required for the entire procedure on October 8, 1993. Finally, K.J.'s observation of respondent with a piece of equipment in his hand and viewing a monitor is consistent with respondent's standard use of the EKG machine in these types of surgical procedures.

K.J. told her husband when he came home from work on the evening of October 8, 1993 that when she woke up after the surgery the anesthesiologist had his hand down her shirt. K.J.'s husband told her he would support any decision she made about how to handle the matter. K.J. ultimately told her husband she wanted to "drop it." K.J. never complained about respondent's conduct to anyone at the Redding Ambulatory Surgery Center or the Golden State Foot Clinic, and she did not report respondent's conduct to the police or other authorities until after she heard on the news that respondent had been arrested in connection with alleged sexual misconduct toward another patient. Furthermore, on October 18, 1993, less than two weeks after her surgery, K.J. filled out a Patient Survey for the Redding Ambulatory Surgical Center in which she indicated that she was pleased with the treatment she had received; in the "Comments" section of the survey, K.J. wrote, "I wouldn't dream of going anywhere else!" K.J.'s testimony at hearing that she believed the survey pertained to her treatment by Dr. Robert Basinger and his staff at the Golden State Foot Clinic, and not to the surgery, was not persuasive.

IX

On December 28, 1993, P.W. was respondent's anesthesiology patient at the Redding Ambulatory Surgery Center. At the time of surgery, P.W. was wearing a sweater, a sheer bra, a pair of baggy sweatpants which belonged to her husband, and bikini underwear. After P.W. was escorted to the surgery suite and was seated in the chair, the nurse asked P.W. to remove her arm from her sweater. P.W. complied, and her sweater was pushed up around her neck. Respondent placed EKG leads on P.W.; P.W. recalled that one was placed right above her left breast and the other one below her left breast. The nurse put a mask over P.W.'s face to administer nitrous oxide, and the nurse inserted the IV. P.W. saw respondent inject medications into the IV before she fell asleep.

When P.W. awoke from the anesthesia, she felt respondent playing with the nipple of her right breast. Respondent fondled P.W.'s nipple for three to four seconds; his hand was outside P.W.'s bra. Respondent then slid his hand down P.W.'s body and under her sweatpants. Respondent slid his hand into P.W.'s underwear and placed his hand on P.W.'s vaginal area. P.W. felt respondent fondling her vaginal area. Respondent removed his hand after several seconds. Respondent did not lift P.W.'s sweatpants or underwear to place his hand on her vaginal area. As respondent removed his hand, P.W. opened her eyes slightly and saw that the surgical screen was in place; she could see the top of Dr. Robert Basinger's head and the top of the nurse's head. P.W. heard Dr. Robert Basinger say that the surgery was about complete. Respondent told P.W. to wake up and open her eyes. The nurse removed the IV and prepared P.W. to go home.

P.W.'s husband picked P.W. up after the surgery and drove her home; other relatives were present in the car. As soon as P.W. arrived at home, she and her husband went to their bedroom; P.W. was extremely upset and told her husband about respondent's conduct. P.W.'s husband, a police officer with the Redding Police Department, immediately contacted the Redding Police Department to report the incident. The next day, Detective Paul Grooms interviewed P.W. at her home. P.W. told Grooms that respondent fondled her right nipple and vaginal area. Grooms asked P.W. if there was "digital penetration" and P.W. said no, because she believed the term referred to insertion of a finger "all the way in the vagina, and that did not happen." P.W., who is also an employee of the Redding Police Department and knew Grooms from work, was extremely embarrassed and uncomfortable discussing the details of respondent's conduct with Grooms; she was even uncomfortable describing the incident to her husband, and did not want others to find out about the incident. P.W.'s demeanor at hearing was shy and introverted and was consistent with her expressions of shock, embarrassment and discomfort over this incident.

At Grooms' request, P.W. made two telephone calls to respondent which were tape recorded. The purpose of the calls were to gather evidence against respondent for criminal prosecution. Grooms gave P.W. instructions about the type of questions to ask respondent to elicit particular information, including an admission of the specific conduct, an apology for the conduct, statement about whether he had done similar things to others, and whether he would try to justify the conduct or encourage her to keep it secret.

In the first taped conversation on December 29, 1993, P.W. told respondent that she was actually awake before respondent told her to open her eyes and she realized that respondent was "touching [her] breasts and putting [his] hands

down [her] pants." P.W. asked respondent for an apology and respondent told her "You surely have it." The second taped conversation took place on December 30, 1993. In that conversation, P.W. asked respondent why he touched her like he did, and respondent said he did not know. P.W. asked respondent if she had done something to cause his actions, or if he had done such a thing before. Respondent said that she had done nothing and that it should not happen again, either toward her or anyone else. P.W. asked if she should discuss the matter with her husband (implying that she had not told him what had occurred) and respondent said she should use her own judgment about what she thought was best. When P.W. asked whether his conduct related to something she was wearing, respondent started to discuss the EKG leads being placed on the chest and the breast area, and he stated that "there's a checking of the bladder to make sure the bladder's not full with IV fluids being given." P.W. challenged respondent's rationalization by confirming that there was no medical reason for respondent to be touching her "in the vaginal area." Respondent confirmed that, "No, there's nothing going on in the vaginal area," to which P.W. responded, "Yeah, but there was, I mean there was and there shouldn't have been..." Respondent again apologized and stated that what had occurred was his responsibility.

Later in the day on December 30, 1993, Detective Grooms and Sergeant Chuck Lebak of the Redding Police Department went to respondent's home to interview him; Grooms secretly taped the conversation with respondent. Grooms told respondent that P.W. had contacted the police and told them about respondent touching her on the breasts and the genital area. Respondent told Grooms that the breast touching did not take place as P.W. alleged because there are "chest leads which can occur and there could be a touching of a breast in that situation." Respondent further stated, "As far as genital touching, I don't know where that would come from." Respondent denied that genital touching had occurred. When asked why P.W. might be saying that, respondent suggested that the anesthesia medications might cause that effect, although it would be unusual. After further discussion, respondent admitted that "it all took place" and admitted that the touching was inappropriate. Respondent admitted that he touched P.W.'s breast "just at the end" of the procedure. Respondent denied touching in the "vaginal area;" respondent stated he touched P.W. "Ah, on the breast, probably down her pubic area, but I don't think, I didn't put any finger in the vagina or anything." Respondent admitted that he touched P.W.'s "genital area, pubic area--touch it," his hand to her skin.

At hearing, respondent testified that he saw P.W.'s nipple through her sheer bra and, on impulse, rested his hand on P.W.'s right breast for three to four seconds; that he noticed P.W. was a redhead and was curious about whether she had red pubic hair; that he lifted P.W.'s pants and placed his hand on

P.W.'s pubic hair, but not below the pubic bone (i.e., one inch above the clitoris); that he rested his hand on her pubic hair for four to six seconds without moving his fingers; and that he was overwhelmed by a feeling that what he was doing was wrong, and withdrew his hand.

To the extent that respondent's testimony at hearing differed from his admissions to P.W. and Detective Grooms in December 1993, his testimony was not credible. At hearing, P.W.'s hair was dark blonde or light brown; it was not red or reddish in color, and respondent's assertion to the contrary is without merit. Furthermore, respondent's assertions that he kept his hand motionless while resting it on P.W.'s right breast and pubic area was inherently incredible and was evidence of respondent's attempt to minimize his misconduct.

Respondent vigorously asserted at hearing that P.W. later embellished her version of the facts in order to justify the filing of felony charges against respondent. The finding of misconduct herein makes no reference to any purported additional details supplied by P.W. to prosecutors after December 31, 1993. However, it is noted that the subsequent description of clitoral stimulation and slight vaginal penetration described by P.W. to Shasta County District Attorney criminal investigator Charlotte Haxby and at hearing is not inconsistent with her earlier description of fondling of the vaginal area.

X

By fondling P.W.'s right nipple and vaginal area on December 28, 1993, respondent engaged in conduct which was grossly negligent within the meaning of Business and Professions Code section 2234(b). "Gross negligence" in the practice of medicine means "an extreme departure" from standard medical practice, or an extreme departure from the ordinary standard of care. Gore v. Board of Medical Quality Assurance (1980) 110 Cal.App.3d 184, at pp. 196-197.

Respondent contends in his Final Argument that there was no evidence (presumably expert testimony) offered on the issue of gross negligence. However, respondent's argument ignores the reasoning of Franz v. Board of Medical Quality Assurance (1982) 31 Cal.3d 124, at p. 141, in which the California Supreme Court held that, "Some questions concerning medical negligence require no expertise. ...Only where the professional significance of underlying facts seems beyond lay comprehension must the basis for the technical findings be shown and an opportunity for rebuttal given. [citation omitted]" In the case of respondent's conduct with P.W., his touching of P.W.'s breast and vaginal area was not for a medical purpose and was completely inappropriate; it occurred at a time when P.W. was sedated, and was unable to offer resistance; and it occurred

during a medical procedure. A "lay inference" is appropriate to determine that, clearly, respondent's actions were an "extreme departure from the standard of practice" for a physician, thereby constituting gross negligence.

XI

By fondling P.W.'s right nipple and vaginal area on December 28, 1993, respondent committed acts which involved "corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon" within the meaning of Business and Professions Code section 2234(e). Again, respondent's argument that no evidence was produced at hearing on this issue is without merit. The American Heritage Dictionary, 2nd College Edition (1982) defines "corrupt" as "marked by immorality and perversion; depraved." Respondent's misconduct, which occurred while respondent was acting in his capacity as a physician, clearly violated accepted standards of public morality and decency, thereby constituting "corruption" which was substantially related to respondent's qualifications, functions and duties as a physician.

XII

By fondling P.W.'s right nipple and vaginal area on December 28, 1993, respondent committed acts of sexual misconduct within the meaning of Business and Professions Code section 726.

Astonishingly, respondent contends in his Final Argument that the touching of P.W.'s breast and vaginal area was the result of a regressive impulse and not for purposes of sexual gratification and was thereby not an act of "sexual misconduct." Respondent apparently believes that, if he is not a paraphile or suffering from sexual psychopathology, he cannot be found to have engaged in sexual misconduct. Respondent's contention is wholly without merit. Respondent's so-called regressive impulse did not manifest itself in an act of petty theft or some other non-sexual "acting out." Regardless of what motivated the misconduct, it was clearly "sexual" in nature. Dr. Caruso, one of respondent's treating therapists, noted that respondent "didn't touch [P.W.'s] nose, he didn't touch her elbows, he didn't touch the heels of her feet. He touched two sexual parts of her body. So obviously there was something sexual there." Dr. Caruso described respondent's conduct with P.W. as an incident of "deviant behavior." Dr. Jules Burstein, Ph.D., a psychologist who evaluated respondent and was called by respondent as an expert witness, acknowledged that respondent touched P.W.'s sexual organs, and that the touching was for a "sexual purpose." In Dr. Burstein's opinion, respondent requires treatment by a therapist with training and experience in both personality disorders and sexual misconduct, and particularly sexual misconduct by professionals. Furthermore, respondent's conduct in fondling

P.W. was "intentional," in that he intended to touch the private sexual organs of his anesthetized patient, and he acted on those intentions. In fact, respondent's own rationalization for the conduct was that he was motivated by "curiosity" about the true color of P.W.'s hair to touch P.W.'s genital area and pubic hair.

XIII

As previously noted in Finding IV above, respondent sought treatment from Dr. Caruso in 1992 for depression and anxiety. Respondent received therapy at least monthly and was on psychotropic medication until the summer of 1993. In January 1993, apparently as a result of respondent's having sought disability insurance benefits, respondent was evaluated by Dr. Ethan Harris, M.D., a psychiatrist. Dr. Harris noted at that time that respondent had undergone several major stressful life events, including two acrimonious divorces, financial problems resulting from poor investments which led to the filing of a Chapter 7 bankruptcy in August 1992, dissatisfaction with his medical practice, and concern over custody issues and estrangement from his children. Dr. Harris further noted that respondent was a practicing Mormon with "high moral standards" and that his beliefs increased respondent's dissatisfaction with his failed marriages and the subsequent behavior of his two former wives. Dr. Harris concluded at that time that respondent suffered a major psychological decompensation prior to March 1992 diagnosed as Major Depression with agitated symptoms, from which respondent was still manifesting residual psychological problems. Dr. Harris also diagnosed respondent as having a Mixed Personality Trait Disorder, with Compulsive and Avoidant Traits. Dr. Harris suggested that respondent might possibly benefit from more intensive counseling, "but considering [respondent's] overall personality characteristics and avoidant traits, he may be only marginally receptive to such intervention." In Dr. Harris' opinion, respondent was markedly impaired in his ability to perform in a highly stressful occupation such as urology, but felt he was only moderately limited in his ability to perform a routine job such as the part-time employment in his brother's podiatry practice. Dr. Harris felt that, even with continued improvement, respondent would not likely regain the level of drive, motivation and skill needed to resume the practice of urology.

After the termination of therapy with Dr. Caruso in May of 1993 and the gradual tapering off of his antidepressant medication, respondent appeared to function adequately for several months. Respondent took four of his five children on a vacation to Hawaii in November 1993 and felt that his relationship had improved with J.B., his second (ex)-wife, with whom Respondent harbored a hope of reconciliation. Respondent was alone on Christmas day, and his two young sons from his second marriage arrived on December 26, 1993 to spend a week with

him. On December 27, 1993, respondent learned from his two sons that J.B. had a boyfriend who was "sleeping over" at their house. Respondent reportedly felt distraught at the realization that his hopes for reconciliation with J.B. were unfounded; respondent believes this traumatic revelation was the precipitating event for his conduct with P.W. on December 28, 1993.

After respondent was interviewed by the police on December 30, 1993, respondent attempted to contact Dr. Caruso, and eventually met with Dr. Caruso on January 4, 1994. Respondent resumed taking psychotropic medication, and had several sessions with Dr. Caruso before seeking re-evaluation and treatment with Dr. Harris in February, 1994. Respondent received therapy from Walter N. Friedman, a licensed psychological assistant working for Dr. Harris, and Dr. Harris adjusted respondent's psychotropic medications.

As part of his re-evaluation of respondent, Dr. Harris ordered psychological testing to be performed by Dr. Steven D. McCormick, Ph.D., a psychologist. Dr. McCormick's report, dated March 18, 1994, paints a picture of a very troubled individual with a maladaptive personality style; Dr. McCormick states that "[respondent's] test results describe a very concerningly disturbed individual. That is, his distorted thought processes, lack of real social connectedness, maladaptive coping style and his strong and distorted angry feelings suggest that he is psychologically impaired." Test results suggested that respondent is preoccupied by disruptive thoughts and is likely to use fantasies to achieve gratification of needs and resolve conflicts; his response style suggests that respondent's mood is persistently distressful and vacillates between his desire for affection and fear of rebuff. According to Dr. McCormick, patients with this level of personality disturbance have few avenues of gratification, meeting needs and managing impulses, resolving conflict or coping with external stressors; they are likely to avoid high levels of stress through regressive decompensation and psychological numbing. At hearing, Dr. Harris defined "regressive decompensation" as unacceptable thoughts and actions, and "psychological numbing" as unreactive detachment.

Other testing performed by Dr. McCormick suggested that respondent was feeling a lot of anger ("deep angry feelings and oppositional tendencies which are associated with distorted thought processes") and that respondent had a tendency towards hostile acting out and use of primitive aggressive behaviors. Dr. McCormick's report concludes that while respondent may welcome therapy initially to alleviate symptoms of distress associated with his condition, his underlying personality disorder casts doubt on the prognosis for long-term treatment.

Dr. Harris diagnosed respondent as suffering from major depression and personality disorder with schizoid traits (social

withdrawal and social distrust), avoidant traits (failure to acknowledge problems), and compulsive traits (excessive demands on himself, preoccupation with an idea, such as reconciliation with J.B.). Dr. Harris concluded that respondent requires psychotropic drugs to facilitate therapy and daily functioning, and he needs extensive psychotherapy; Dr. Harris acknowledged that personality disorders are difficult to treat because individuals with schizoid/avoidant personality traits tend to dodge issues and withdraw, making them poor candidates for therapy.

Additional psychological testing was performed on respondent by Dr. Jules Burstein, Ph.D., a psychologist, in April 1994. Tests revealed that respondent was "an individual of emotional severity and grimness who covers up feelings of hostility and resentment. He has a rigid need to maintain self-control and tends to be harsh in his moral judgments of others as well as himself....Rarely able to submerge his fears and memories of past humiliations, his tensions and resentments may break through in sudden irrational outbursts of anger for which he later feels regretful."

Respondent was evaluated by Dr. John B. Sikorski, M.D., a psychiatrist, in April, May and June 1994. Dr. Sikorski generally agreed with the diagnosis reached by Dr. Harris, but he emphasized compulsive and avoidant traits in respondent's mixed personality disorder, rather than schizoid traits.

Respondent was evaluated by Dr. Linda Schaffer, M.D., a psychiatrist, at the request of the Board. Dr. Schaffer's diagnosis of paraphilia was based on her belief that respondent had engaged in sexual misconduct not only with P.W., but with M.B., K.J. and another patient, C.G., as well. Inasmuch as the evidence did not support findings that respondent fondled M.B. and K.J. (and allegations concerning C.G. were dismissed by complainant at hearing), Dr. Schaffer's opinion is accorded little weight.

XIV

The consensus of persuasive expert opinion established that respondent does not fit the typical psychological profile of a paraphile or aggressive sex offender. Respondent's psychological testing does not reveal the narcissistic or anti-social personality traits characteristic of paraphilia, and there is no earlier history of sexual psychopathology; it is extremely uncommon for paraphilia to manifest itself for the first time in middle adulthood. Instead, it is most likely that respondent continues to suffer from depression which was not being treated in the fall of 1993, and respondent suffered a breakdown in judgment and impulse control which led to the misconduct with P.W. on December 28, 1993.

While there is general agreement about the nature of respondent's mental illness, there is conflicting evidence concerning respondent's prognosis and ability to practice as a physician. In particular, it is noted that the treatment of personality disorders, if successful at all, takes many years of therapy. Respondent's functioning throughout his adult life has been demonstrably impaired; respondent has a long history of dysfunction characterized by depression, family and marital discord, financial problems, and abandonment of his profession/specialty. However, the evidence was clear that, as of the date of hearing, respondent was incapable of practicing medicine without harm to the public, and his ability to practice in the future, if at all, was dependent on his successful treatment in therapy, the outcome of which cannot be predicted at this time.

XV

Respondent has begun psychotherapy with Dr. Kay H. Blacker, M.D., a psychiatrist. Respondent continues on psychotropic medication; as of May 1994, respondent was taking Tofranil 25 mg. at bedtime, Zoloft two 50 mg. tablets per day, and Valium 5 mg. as needed up to four times per day.

While respondent's condition has improved since the incident with P.W. as a result of therapy and medication, respondent continued to demonstrate in his testimony at hearing the underlying character traits which have contributed to his current inability to practice medicine. Respondent's underlying anger and hostility surfaced in his testimony at hearing. Respondent lied under oath when he denied having initially attempted to mislead the police in his discussion with Detective Grooms and Sergeant Lebak on December 30, 1993, and he was defensive and hostile when confronted with his lack of candor.

Respondent's receptivity to treatment was also called into question by his express disagreement with and resistance to the assessments of the various mental health practitioners who had evaluated him over his ability to return to work and under what circumstances. Even more disturbing, however, was respondent's inclination to blame his current difficulties on inadequate treatment by others; instead of blaming the victim, i.e., P.W., in this matter, respondent has apparently decided to cast himself as a victim and blame Dr. Caruso for terminating treatment (therapy and medication) prematurely. In addition, he expressed frustration that Dr. Harris was not performing "real" therapy with respondent in the spring of 1994 but was simply "adjusting medications."

Respondent has been ill-served by the experience of listening to several therapists dissect his condition at hearing; respondent has incorporated much of the psychological terminology

into his own vocabulary and is using it to minimize and avoid responsibility for his conduct. In that regard, respondent's explanation for what triggered his "regressive episode" seems rather like a post-hoc rationalization for his conduct. It is over-analyzed, probably as a result of respondent having had access to the psychologist reports, whereas in a pure treatment situation these opinions might not have been shared with the patient at this early stage of therapy.

Consistent with his compulsive personality style, respondent appears anxious to find a therapist to tell him what is wrong so he can "fix" it. Respondent does not appear to have genuine insight into the underlying psychological problems which led to his misconduct, and it is difficult to assess whether respondent is truly capable of delving deeply into therapy to gain such insight.

XVI

In his Final Argument, respondent proposes that he be permitted to enter the Impaired Physician Diversion Program authorized by Business and Profession Code section 2340 et seq. in lieu of formal disciplinary action. While innovative, respondent's proposal is not an appropriate resolution of this matter, given the fact that cause for disciplinary action has been established herein.

DETERMINATION OF ISSUES

I

Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's physician's and surgeon's certificate pursuant to Business and Professions Code section 2234(a) and (b) by reason of Findings IX-X.

II

Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's physician's and surgeon's certificate pursuant to Business and Professions Code section 2234(a) and (e) by reason of Findings IX and XI.

III

Clear and convincing evidence to a reasonable certainty established cause for discipline of respondent's physician's and surgeon's certificate pursuant to Business and Professions Code section 726 by reason of Findings IX and XII.

IV

No cause for disciplinary action against respondent was established by reason of Findings VI, VII and VIII.

V

The matters set forth in Findings XIII-XVI, as well as all other evidence of mitigation and/or rehabilitation offered by respondent, were fully considered in making the Order below.

ORDER

Physician's and Surgeon's Certificate No. G-19374 issued to respondent Gerald Thomas Basinger, M.D. is revoked pursuant to Determination of Issues I, II and III, separately and collectively.

Dated: November 4, 1994

Catherine B. Frink

CATHERINE B. FRINK
Administrative Law Judge
Office of Administrative Hearings

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7
8 BEFORE THE DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the)	No. D-5699
12 Accusation Against:)	
)	ACCUSATION
13 GERALD T. BASINGER, M.D.)	
923 Dana Drive, Suite 1)	
14 Redding, CA 96003)	
)	
15 Physician's and Surgeon's)	
Certificate No. G-19374)	
)	
16 Respondent.)	
)	

17
18 Complainant, Dixon Arnett, alleges as follows:

- 19 1. He is the Executive Director of the Medical Board
20 of California (hereinafter the "Board") and makes and files this
21 accusation solely in his official capacity.
- 22 2. On or about October 15, 1970, the Board issued to
23 respondent, Gerald T. Basinger, M.D. (hereinafter "respondent")
24 Physician's and Surgeon's Certificate No. G-19374. Said
25 certificate is now, and was at all times mentioned herein in full
26 force and effect and will expire on January 1, 1996, unless
27 renewed.

1 3. Section 2004 of the Business and Professions
2 Code^{1/} provides that the Board has the responsibility for the
3 enforcement of disciplinary provisions of the Medical Practices
4 Act and for reviewing the quality of medical practice carried out
5 by physician's and surgeon's certificate holder.

6 4. Section 2234 of the Code provides that the
7 Division of Medical Quality (hereinafter "the Division") shall
8 take action against any licensee who is charged with
9 unprofessional conduct. Unprofessional conduct is defined
10 therein to include but not to be limited to: (a) violating or
11 attempting to violate directly or indirectly . . . any provision
12 of the Medical Practice Act; (b) gross negligence; and (e) the
13 commission of any act involving dishonesty or corruption which is
14 substantially related to the qualifications, functions and duties
15 of a physician and surgeon.

16 5. Section 726 provides, in pertinent part, that the
17 commission of any act of sexual abuse, misconduct, or relations
18 with a patient which is substantially related to the
19 qualifications, functions or duties of the occupation for which a
20 license was issued constitutes unprofessional conduct and is
21 grounds for disciplinary action for a physician and surgeon.

22 / / /

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26 1. All statutory references are to the Business and
27 Professions Code, unless otherwise stated.

Patient P.W.^{2/}

6. On or about December 28, 1993, P.W. was respondent's anesthesiology patient for foot surgery at Golden State Foot Clinic in Redding. After surgery was completed, P.W. observed respondent fondling her breast and using his fingers to fondle P.W.'s clitoris and penetrate her vagina.

Patient M.B.

7. On October 1, 1993, M.B. was respondent's anesthesiology patient for foot surgery performed at Golden State Foot Clinic in Redding. After M.B. awakened from the anesthesia, she observed respondent fondling her breast.

Patient C.C.

8. On October 19, 1993, C.C. was respondent's anesthesiology patient for foot surgery performed at Golden State Foot Clinic in Redding. After awakening from the anesthesia, C.C. observed respondent fondling her breast.

9. Respondent's actions as set forth in paragraphs 6, 7, and 8 have exposed his license to discipline for unprofessional conduct pursuant to sections 2234(a), 2234(b), 2234(e), and 726 of the Code in that respondent's sexual acts with patients P.W., M.B., and C.C. constitute acts of gross negligence and commission of sexual misconduct with a patient.

WHEREFORE, complainant requests that the Division of Medical Quality schedule a hearing on the matters and thereafter issue an order revoking the Physician's and Surgeon's Certificate

2. To protect patient privacy, the patient is referred to by initials. Disclosure of the full name will be provided to respondent pursuant to a timely request for discovery.

1 Number G-19374 issued to Gerald T. Basinger, M.D., and take such
2 other and further action as the Division deems proper.

3 DATED: 2/24/94

Robert C. Miller for

4 DIXON ARNETT
5 Executive Director
6 Medical Board of California
7 Department of Consumer Affairs
8 State of California
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